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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**CHRISTOPHER EMERSON,**

**Plaintiff,**

**v.**

**TANI DOWNING,**

**Defendant.**

**REPORT AND RECOMMENDATION**

**Case No. 2:05-cv-01023-PGC-PMW**

**District Judge Paul G. Cassell**

**Magistrate Judge Paul M. Warner**

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This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(B).

Christopher Emerson's ("Plaintiff") complaint in this case was filed on December 9, 2005.<sup>1</sup> On September 14, 2006, after the case had been pending for over nine months without any further activity in the docket, the court issued an order to show cause why the case should not be dismissed, as service of process had not been completed within 120 days after the date Plaintiff filed his complaint.<sup>2</sup> *See* Fed. R. Civ. P. 4(m). That order directed Plaintiff to respond to the court in writing within 15 days to inform the court of the status of the case and intentions to proceed. As of the date of this Report and Recommendation, the 15-day period referenced in the court's order has expired, and the court has not received any response from Plaintiff.

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<sup>1</sup> Docket no. 3.

<sup>2</sup> Docket no. 5.

In relevant part, rule 4(m) provides that

[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time.

*Id.*

Plaintiff has failed to complete service of process within 120 days after the date his complaint was filed, and the court's order to show cause has provided Plaintiff with the notice required by rule 4(m). *See id.* Accordingly, **IT IS HEREBY RECOMMENDED** that this case be dismissed, without prejudice. *See id.*

\* \* \* \* \*

Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object. The parties must file any objection to this Report and Recommendation within ten days after receiving it. Failure to object may constitute waiver of objections upon subsequent review.

DATED this 12th day of October, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written in black ink above a horizontal line.

PAUL M. WARNER  
United States Magistrate Judge